

STATE OF MICHIGAN
COURT OF APPEALS

BROWN DAIRY EQUIPMENT, INC.,

Plaintiff-Appellee,

v

STEVE LESOSKI,

Defendant-Appellant.

UNPUBLISHED
November 9, 2010

No. 291372
Tuscola Circuit Court
LC No. 08-024874-CK

Before: O'CONNELL, P.J., and BANDSTRA and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right the trial court's entry of preliminary and permanent injunctions enforcing a covenant not to compete in favor of plaintiff. We affirm.

This case arose out of defendant's decision to quit his job with plaintiff selling supplies used in the dairy farming business, in order to work for one of plaintiff's competitors in the same geographic area. When defendant began working for plaintiff, he signed an employment agreement that contained a covenant not to compete and a nonsolicitation covenant. Defendant worked for plaintiff for approximately four years, calling on approximately 120 dairy farmers on plaintiff's behalf. After defendant began working for plaintiff's competitor, plaintiff brought an action for a preliminary injunction to enforce the covenants. At the preliminary injunction hearing, defendant acknowledged that he was aware of the covenants when he made the decision to work for the competitor. Defendant further acknowledged that he had called on plaintiff's customers on behalf of his new employer, and that two of plaintiff's customers had started purchasing the new employer's products.

This Court reviews a trial court's decision to grant injunctive relief for an abuse of discretion. *Mich State AFL-CIO v Sec'y of State*, 230 Mich App 1, 14; 583 NW2d 701 (1998). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

The purpose of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties' rights. *Alliance for the Mentally Ill of Mich v Dep't of Community Health*, 231 Mich App 647, 655-656; 588 NW2d 133 (1999). And, a permanent injunction is "an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Kernen v Homestead Dev Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998); *Peninsula Sanitation, Inc v City of Manistique*,

208 Mich App 34, 43; 526 NW2d 607 (1994). In deciding whether injunctive relief is appropriate, the trial court will generally balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant, and decide in accordance with justice and equity under all the circumstances of the case. *Kernen*, 232 Mich App at 514.

The trial court entered the preliminary injunction and the subsequent permanent injunction¹ based upon evidence presented at the preliminary injunction hearing. To rule on a motion for preliminary injunction, the trial court must consider four factors:

(1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable injury if the relief is not granted. [*Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998).]

Here, the trial court correctly determined that consideration of these factors favored entry of the injunction. The first factor, harm to the public interest, has no particular bearing in this case. See *Certified Restoration Dry Cleaning Network, LLC v Tenke Corp*, 511 F3d 535, 551 (CA 6, 2007) (“No important public policies readily appear to be implicated by the issuance of the preliminary injunction [enforcing a restrictive covenant] other than the general public interest in the enforcement of voluntarily assumed contract obligations.”). Similarly, the second factor, temporary relief, has little bearing on this case, given that the trial court has now entered a permanent injunction. However, at the time of the preliminary injunction, this factor favored plaintiff in that plaintiff’s unlimited potential loss of additional customers to its competitor outweighed defendant’s three-year preclusion against working for the competitor. See *Superior Consulting Co, Inc v Walling*, 851 F Supp 839, 848 (ED Mich, 1994).

The third factor, likelihood of prevailing on the merits, requires us to determine whether the covenants at issue were reasonable under MCL 445.774a. The covenants “must protect an employer’s reasonable competitive business interests, but its protection in terms of duration, geographical scope, and the type of employment or line of business must be reasonable. Additionally, a restrictive covenant must be reasonable as between the parties, and it must not be specially injurious to the public.” *St Clair Med, PC v Borgiel*, 270 Mich App 260, 266; 715 NW2d 914 (2006).

Having examined the testimony and the documentary evidence, we conclude that the covenants were reasonable given the specific facts of this case. When defendant was working for plaintiff, he benefited from the goodwill plaintiff had established with its customers, and

¹ The trial court apparently undertook no further analysis and heard no further argument before entering the final order enjoining defendant from employment with plaintiff’s competitor. This appears in large part due to the fact that *defendant* moved the trial court for entry of a final order, which the trial court granted following its denial of defendant’s motion for reconsideration of the trial court’s order granting plaintiff’s motion for a preliminary injunction.

from the knowledge he gained from plaintiff about pricing and product formulations. Defendant continued to develop this goodwill on plaintiff's behalf. The evidence presented in this case established that in the competitive farm-based business of dairy supply sales, goodwill is of considerable value. The covenants allow plaintiff to protect the value of that goodwill by precluding defendant from working for a competitor in a limited market area for a limited time after defendant's departure. This was a reasonable means of preventing defendant from gaining an unfair business advantage for his new employer. See *St Clair*, 270 Mich App 260; see also *Lowry Computer Products, Inc v Head*, 984 F Supp 1111 (ED Mich, 1997).

Further, the record established that plaintiff had no adequate remedy at law for the loss of goodwill and the potential harm to its competitive position resulting from defendant's employment with plaintiff's competitor, and that there existed a real and imminent danger of irreparable injury in the absence of injunctive relief. *Kernen*, 232 Mich App at 509. Therefore, the trial court did not abuse its discretion by granting that relief.

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Jane E. Markey